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Argument

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 OYOLA, ET AL.,

4 Plaintiffs,

5 v.

13 CV 4492 (VSB)

6 GABRIELA CADENA LLC, ET AL.,

7 Defendants.

8 -----x

New York, N.Y.
April 30, 2014
2:30 p.m.

9
10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13 APPEARANCES

14 MEYERS FRIED GRODIN, LLP

15 Attorneys for Plaintiffs Oyola

16 BY: JONATHAN MEYERS

17 GREENBERG TRAURIG, LLP

Attorneys for Defendants Cadena LLC

18 BY: ERIC B. SIGDA

19 LAW OFFICES OF STEVEN E. ROSENFELD, P.C.

Attorneys for Defendant V. Cadena

20 BY: STEVEN E. ROSENFELD

ADAM S. HALL

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1 (Case called)

2 MR. MEYERS: Good afternoon, your Honor.

3 Jonathan Meyers, for the plaintiffs.

4 THE COURT: Good afternoon.

5 MR. ROSENFELD: For the defendant Vidal Cadena, Steven
6 Rosenfeld and Adam Hall.

7 MR. SIGDA: Eric Sigda, from the law firm of Greenberg
8 Traurig.

9 THE COURT: Great. You may be seated for purposes of
10 this conference. Feel free to remain seated when you address
11 the Court.

12 I appreciate and I apologize for this morning. We had
13 an electronic glitch. Although the minute entry was entered.
14 It didn't transfer over to my actual electronic calendar, so we
15 did not have this matter on our calendar, unfortunately. But
16 we're to make sure that that doesn't happen again with some
17 additional checks and balances I guess so the computer is
18 infallible.

19 So the parties are here based upon my request for
20 supplemental briefing. So let me review for are the parties
21 what documentation I currently have. I have the plaintiff's
22 supplemental brief dated April 9, the defendant's supplemental
23 brief dated -- well, April 18 is the date it was served and it
24 was filed on the 18th and then I have the reply of the
25 plaintiff which was filed on the 21st.

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1 MR. HALL: Very briefly, your Honor, we filed a
2 corrected supplemental because of a typographical error
3 referring to 4A when we meant to refer to 4M.

4 THE COURT: That's correct, yes.

5 So those are the documents that I have and obviously
6 I've got the prior briefing that was done in the matter also.

7 MR. MEYERS: If I may, judge?

8 THE COURT: Sure.

9 MR. MEYERS: In addition to the plaintiff's
10 supplemental brief on 4/9 there was also declaration of
11 counsel.

12 THE COURT: Yes. There's a declaration from
13 Mr. Meyers dated April 9.

14 MR. HALL: And there's a supplemental declaration from
15 Mr. Cadena as well on ECF 55.

16 THE COURT: OK. So now as I understand it, there are
17 I guess two main issues relating to the filing of the complaint
18 and the amended complaint. As to the Cadena defendants and
19 I'll adopt for purposes of this proceeding I'll adopt that for
20 the defendants other than Mr. Marin that they were served with
21 the initial complaint within the 120 days that -- so the issue
22 is, for them is whether or not the amendment was appropriately
23 filed and served. The -- excuse me -- the amended complaint
24 was appropriately filed as to them.

25 From the declaration of Mr. Meyers I understand that

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1 those defendants have indicated that they were not going to
2 seek to move to dismiss and that they would proceed, would
3 answer the amended complaint. I think on that basis -- and
4 also quite frankly, on the basis that as to those defendants
5 they had been proceeding as if the amended complaint had been
6 validly filed and responding to discovery and other things. So
7 even if there had not been that agreement I would find that it
8 would be appropriate to -- I am not sure if it would be good
9 cause would have been shown but basically there was a waiver as
10 to those defendants with regard to the 120 days.

11 Mr. Hall, did you want to speak to something?

12 MR. HALL: No. I was just moving the microphone, but
13 as the Gabriela Cadena defendants I have no position.

14 THE COURT: OK. All right. So that leaves the
15 remaining issue with regard to Mr. Cadena or Mr. Miranda. I
16 don't know what -- and as to him the initial complaint as I
17 understand it was although filed was never, service was never
18 even attempted as to Mr. Marin.

19 The amended complaint -- and again putting the service
20 issue aside for the moment -- would have been served outside of
21 the 120 days from the date of the initial filing of the
22 complaint, which my understanding is the date from the case law
23 that's been cited is the initiation of the action that begins
24 the 120 days.

25 So under Rule 4 that leaves sort of two options.

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1 There is a motion I believe by Mr. Marin to dismiss the
2 complaint as to him before me. And I can either dismiss it at
3 this stage without prejudice or order that service be made
4 within a specified time period.

5 There are a couple of issues I want to discuss with
6 counsel related to that. I think before I go any further, I
7 think the fact that the under any way you count it, the more
8 than 120 days had passed from the time period of the initiation
9 of the action to the time period that Mr. Marin was arguably
10 served. I think that that fact either through dismissal or
11 even if I grant more time that that alleviates the issue of
12 service. In other words, the briefing that was done with
13 regard to service is no longer an issue because I think it's
14 basically a moot point because the 120 days had elapsed. In
15 other words, any way you cut it Mr. Marin has to be served
16 again. The issue is whether or not I extend the time for
17 service or dismiss and then therefore another complaint needs
18 to be filed and then served.

19 I guess I'll hear from the parties as to their
20 position.

21 Mr. Meyers, you first and then I'll hear from the
22 defendants.

23 MR. MEYERS: Sure. My inclination and what I would
24 argue for is to get some more time to serve Mr. Marin because
25 ultimately one way or another plaintiffs are going to be

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1 looking to him as one of the parties allegedly responsible. So
2 for my purposes it just seems to me more efficient, less time
3 effort and money and expense that needs to go into it to extend
4 the time-served in this case rather than go out, file another
5 complaint, file another filing fee and then I could even see
6 that down the road a motion to try to consolidate those cases.
7 So my view is just sort of do it more efficiently.

8 THE COURT: Let me raise certain points that I think
9 for the parties to consider. One is although the service part
10 of the motion to dismiss has been mooted, I believe that
11 Mr. Marin had moved to dismiss based on lack of personal
12 jurisdiction also. So again, to the extent that there is a
13 deficiency in the complaint with regard to personal
14 jurisdiction the extension of time wouldn't necessarily cure
15 that. Again, I not preliminarily looked at. I can't tell you
16 how I will rule on that but there have been certain issues
17 raised by Mr. Marin related to that. So that's an issue for
18 you to consider.

19 The other issue to consider -- and I don't know what
20 is -- whether the dismissal -- well, there are actually now
21 that I think about it, it may -- you know, the dismissal would
22 mean you are starting all over again and I don't know whether
23 there are any statute of limitations issues and I know that
24 there are allegations that the violations of statute were
25 willful which I think would mean a three year statute of

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1 limitations but otherwise it would be two. I know some of pay
2 periods were in 2011. I don't know what exact impact that
3 would necessarily have but I am raising the issue so you can
4 consider it. I can tell you -- well, why don't I hear from the
5 defense.

6 MR. HALL: Thank you, your Honor. Under Rule 4M you
7 have, as you indicated, you have the ability to extend. The
8 case law interpreting your discretion falls in two different
9 options. One, you must extend if you find good cause.

10 THE COURT: Yes.

11 MR. HALL: Notwithstanding whether or not there's good
12 cause you can extend in the exercise of your discretion and I'd
13 just like to spend just a minute going over both of those.
14 Because counsel raises the issues of expense, well, we have
15 gone to a huge expense addressing the alleged service that was
16 made here. And I understand that it's moot but when we're
17 weighing the expense of starting again we should also weigh the
18 expense that Mr. Marin and Mr. Cadena as we call him incurred
19 in fighting the service issue. And so it doesn't just
20 automatically go to his benefit. We've incurred significant
21 expense as well attacking the improper service.

22 But on the good cause the courts, this Court in Cobalt
23 Multifamily Investors and in Six for Justice articulated the
24 standard for good cause and it says good cause typically exists
25 only in exceptional circumstances where the failure to serve in

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1 a timely manner results --

2 THE COURT: Mr. Hall, I might be able to circumvent
3 there but I don't believe -- and I am willing to hear from
4 Mr. Meyers -- but I don't believe good cause has really been
5 shown here with regard to Mr. Marin. So I appreciate -- so,
6 why don't you start from that vantage point.

7 And Mr. Meyers, if you want to I'll let you speak
8 after I hear from Mr. Hall on the second point.

9 MR. HALL: So if there is no good cause and we just
10 deal with your good -- let me cite to the Bacall case which is
11 Bacall v. Ambassador Construction, also out of this court from
12 1995. In Bacall I don't believe broke it out between good
13 cause and just a generic discretion but Bacall said that if the
14 plaintiff can provide no reasonable excuse for the failure to
15 make timely service, the fact that re-institution of action
16 would be barred by a statute of limitations. The question your
17 Honor just asked is not by itself a reason to deny a motion to
18 dismiss. So your Honor should consider Bacall the statute of
19 limitations factor but it's not all by itself.

20 The questions and they come up through there are four
21 factors that the courts have articulated. The first is the
22 expiration of statute of limitations. Bacall says you can't
23 solely consider that. The next one is whether the defendant
24 had actual notice of the claims. In most of the cases that
25 either of us have cited for this extension whether there's good

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1 cause or just discretionary, the defendant proceeded or acted
2 and had actual notice. Here, there's no allegation that we had
3 actual notice and we didn't.

4 This third element whether we attempted to conceal
5 defects and service --

6 THE COURT: Just with regard to that --

7 MR. HALL: Yes, sir.

8 THE COURT: -- are you saying that Mr. Marin never had
9 conversations with his daughter? I know there are no
10 allegations of actual notice but never had conversations with
11 his daughter that a lawsuit had been filed against her and some
12 of the corporate entities relating to wages?

13 MR. HALL: As an officer of the court, I don't know
14 the answer to that question. However, the cases that address
15 whether defendant had actual notice are not in the context of
16 whether the parties talked about it but it's in the context of
17 actual litigation activity.

18 THE COURT: Understood.

19 MR. HALL: So that's the best I can do.

20 THE COURT: I just want to be clear. I wanted to make
21 sure that I understand that with regard to notice from the
22 standpoint of service of the complaint and adequacy of that. I
23 just wanted to make sure that you weren't saying that he had,
24 that you were saying that he had absolutely no knowledge of it.
25 And I am not sir saying you saying that he did. You just don't

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1 know one way or another with regard to let's say the nonlegal
2 aspect of what the notice might be.

3 MR. HALL: That's right. I don't know the answer to
4 that question. And then the last factor which is whether
5 defendant would be prejudiced by the extension. Well, here
6 what we have is -- oh, and the -- and I am going to
7 mispronounce it is Cioce case spelled C-I-O-C-E, Southern
8 District of New York and then it went up to the Second Circuit
9 which affirmed the dismissal found that there's no prejudice
10 where the case would be dismissed for other reasons as well and
11 here we do have those other reasons.

12 We have the personal jurisdiction attached, which I'm
13 not going to talk about unless your Honor wants to hear it. We
14 also -- and your Honor didn't indicate but we do have a
15 12(b)(6) motion pending as well. But the prejudice that
16 they're talking about is often in the sense of faded memory
17 over time and things like that. Candidly, we don't know. They
18 have not attempted to demonstrate that there is no prejudice.
19 And respectfully, the burden is on them to meet affirmatively
20 these four factors, not on us to disprove them. And obviously,
21 we have the money side which can be considered as a prejudice.
22 We have been here twice, substantial briefing. And we would
23 simply submit as far as the normal discretion that your Honor
24 should because of the personal jurisdictional issue, because of
25 the service even though it's minimal, the best course is for

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1 them to simply start again. And the only thing they have in
2 their favor is whether or not the statute of limitations
3 expires. And Bacall says you can't just look at that alone.

4 THE COURT: Mr. Meyers?

5 MR. MEYERS: Sure. Thank you, your Honor.

6 Well, I would say this, I certainly don't believe
7 there's been any prejudice to the defendants. In fact we've,
8 myself and Mr. Sigda, who represents the other defendants, made
9 the point of sort of putting off doing depositions until we
10 find out what the status is of Mr. Marin-Cadena who is going to
11 be in the case or not. So I don't think there would be any
12 more prejudice than if we were to start a new lawsuit next week
13 or next month and go through the same discovery process, it
14 wouldn't be any different. So I don't think there's anything
15 in terms of prejudice.

16 In terms of notice to Ms. Marin again, I don't know
17 what notice he did or didn't have of the lawsuit but,
18 ultimately, one way or another this lawsuit is here. The
19 controversy exists and one way or the other he's going to be
20 brought into it. So kind of my view is if one way or another
21 he is going to be brought into it anyway, I just don't know how
22 compelling those arguments are.

23 THE COURT: Here, this is just a practical issue for
24 you Mr. Meyers. Because there is pending and I had forgotten
25 about the 12(b)(6) aspect of the motion, but there is the

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1 aspect of personal jurisdiction also. So assuming I exercise
2 my discretion and grant you more time to do the service, the
3 issue then becomes that those same motions I think will either
4 be filed or more likely just will ask me to apply those
5 portions of the motions to whatever complaint gets served.

6 To the extent that they have raised issues that are
7 real issues, in other words, that I would look at it and make a
8 determination and I would say and I think I said this the last
9 time that although there may be allegations in the complaint
10 that go to try to demonstrate that Mr. Marin was an employer
11 under the FLSA, those same -- although they're similar, they
12 are not pro-extensive with determination of personal
13 jurisdiction as I understand it. So what could happen -- and
14 again, I am not saying this necessarily would but you're on
15 notice that there are certain things that they are claiming
16 that are deficient as to your complaint.

17 If later on I agree with them on either the personal
18 jurisdiction or on the 12(b)(6) issue and the 12(b)(6) I don't
19 remember how many counts there are but that could mean you may
20 need to basically file again which would also mean I think that
21 there would be further statute of limitations questions.
22 Although, again, if you have if it's willful you know three
23 years if not otherwise. So you know, so those are sort of
24 just -- and part of that is sort of just strategic
25 considerations for you as to your, as to the pleading that you

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1 want to move forward on.

2 You know I do think -- and I would like you to address
3 some of issues that Mr. Hall raised with regard to whether or
4 not I should exercise my discretion in this case.

5 MR. MEYERS: Sure. Yes, your Honor. And I agree you
6 have discretion. Quite frankly I think the other points in
7 terms of discretion that I did mention earlier was well in
8 terms of has there been any deceptive action or action taken on
9 the part of Mr. Marin Cadena to hide service issues or things
10 like that. No, I would -- obviously that hasn't happened.
11 We've met this head-on right away. But by the same token as
12 soon as the issue of service was raised and I am specifically
13 talking about the amended complaint that was raised for the
14 first time to my understanding was when you were here on April
15 2nd. So of course, I took immediate action right after our
16 conference electronically filed and so it would be out there
17 and at least arguably served.

18 So I think between that and what I addressed earlier I
19 think that those are factors that the Court can use to exercise
20 its discretion in favor of the plaintiffs being able to keep
21 Mr. Marin in this case.

22 THE COURT: Mr. Meyers, just -- and I apologize for
23 interrupting -- but there is another issue which I think and I
24 don't remember. I've got the transcript here. I didn't read
25 all the way through it. I didn't read the beginning. But I

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1 may have said this about the motion to dismiss, that to the
2 extent that they've, the defendants have raised valid issues
3 with regard to the pleading itself that the time to make a
4 decision about what you are going to do with the complaint is
5 before I issue a decision. So if in fact we proceed on the
6 path where I exercise my discretion and you serve Mr. Marin and
7 the service whether it's good or bad or whatever, I assume that
8 there's going to be a re-initiation of the motion. And if I
9 grant it -- and in other words, if I find that there is a lack
10 of personal jurisdiction alleged sufficient in the complaint or
11 that the 12(b)(6) portion of the motion is valid, you know a
12 subsequent motion to amend on behalf of your clients, you would
13 have to show good cause for not amending.

14 MR. MEYERS: Sure. Your Honor, I would say this. I
15 think I knew enough from the last time that we were here what
16 the issues are that Mr. Marin Cadena is raising. And either
17 way, to the extent that your Honor says we should go forward in
18 this case, I would amend the complaint to address those issues
19 is try to head off a motion. And likewise, if you were to say
20 you're dismissing him from the case without prejudice if I
21 refile I already know the same thing I would put in that new
22 action to address those issues.

23 THE COURT: Although I get -- here is the issue with
24 that though. To the extent I am extending the time for you I
25 think I'd be extending the time as to the pleading as it stands

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1 now. In other words, the amended complaint that, where service
2 was attempted or made, I don't know how to describe it but
3 where the complaint that standing that is in existence right
4 now. So I don't think it would -- and I'll hear from you on
5 this but I don't think the extension means that you can then
6 amend and it's -- cause it's sort of like you are having it
7 both ways then. So I think you have to, if you are going to --
8 in other words, if your thought process is you know, I am going
9 to amend to try and clean some of these things up. I don't
10 think you would be able to do it if I exercise my discretion.
11 And so the way to do it is if I dismiss the complaint, you know
12 you refile. And again, I don't know how it would look whether
13 you refile and it would be a complaint and whether it would be
14 solely against Mr. Marin and then we would consolidate. In
15 other words, they'd be exactly the same and then you would do a
16 consolidated complaint which would add the -- allegations that
17 you intend to add and/or allegations that you believe bolster
18 your claim so that they wouldn't be subject to 1B6.

19 We were in chambers thinking about this and just as
20 the issue of the 120 days had not -- I believe it hadn't
21 occurred to the parties only when we started talking about it
22 that it occurred to me that there may be an issue there and lo
23 and behold there was something there. So I'll hear from you
24 with that in mind.

25 MR. MEYERS: Sure, your Honor. The greater concern to

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1 me is to address those pleading issues with respect to
2 Mr. Marin Cadena. So I am less concerned about the statute of
3 limitations. I would prefer to have the option to add to my
4 complaint or come up with a new complaint that has enhanced
5 details about Mr. Marin Cadena's involvement.

6 THE COURT: Yeah. OK. I'll hear from Mr. Hall or any
7 of the other defense counsel.

8 MR. HALL: I was about to say something and I am not
9 sure whether I need to because it sounds like Mr. Meyers is
10 conceding that he does no longer want you to extend service
11 because you've given him the choice either extend and proceed
12 on the existing complaint as dismissal with prejudice.

13 THE COURT: It certainly could be because he would
14 have to show good cause as to why he should be able to amend
15 when I gave him the opportunity.

16 MR. HALL: Exactly. Or amending starting anew and
17 amending. But your Honor, I just want to refresh and, your
18 Honor, indicated you hadn't had a chance to get through the
19 entire transcript so I am going to go right to the point of
20 when you had that discussion. It's at page 31 and 32 of the
21 transcript.

22 THE COURT: I usually do. So I thought that I did and
23 I just wanted to, again, I think I am right about the extension
24 point that he couldn't just amend because that would, then it
25 would vitiate the rule basically.

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1 MR. HALL: The other point I wanted to make in
2 assuming Mr. Meyers still is asking you to extend the date for
3 service.

4 THE COURT: Why don't we -- as I heard you,
5 Mr. Meyers, you would -- and again it's still in my discretion
6 but if you had your druthers you would say dismiss. I'll start
7 from square one with regard to Mr. Marin. Do what I need to do
8 to clean that up, and file it and consolidate or however
9 procedurally it would go later on.

10 MR. MEYERS: Yes, judge, to make that clear based on
11 what we've discussed it's yes.

12 THE COURT: OK. So I mean I think what I intend to do
13 let me ask and this is where do things stand as far as -- I
14 know that no depositions have occurred but where do things
15 stand as far as paper discovery and other discovery.

16 MR. MEYERS: Sure, your Honor. Mr. Sigda and I spoke
17 a week ago about this because you had said that you really
18 don't want to have real discovery disputes coming before the
19 Court. There is in plaintiff's view discovery we still need
20 from defendant. We still didn't get defendant's interrogatory
21 answers but there are some discrete -- and Mr. Sigda said that
22 he is working on it and he is going to get that -- but there
23 are a handful of issues where I think we do have an actual
24 dispute where we say we want these categories of information
25 and they say they're going to resist that. So I think we know

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1 or we're close to knowing what those are and then obviously it
2 would be depositions.

3 THE COURT: All right. So if there are disputes look
4 at my individual rules, a letter sort of outlining the disputes
5 and we can deal with those probably in a telephone call and we
6 solve those prior to the next time we meet. I think that -- so
7 I will dismiss the complaint as to Mr. Marin.

8 Mr. Meyers, as to filing and getting service done I
9 was going to give you a month to do that.

10 And so between now and then I'd like the parties to
11 meet and confer, crystallize to the extent there are any
12 disputes with regard to the Gabriela Cadena defendants
13 discovery disputes that I can rule on between now and then I'd
14 like to do that so that at least we have that out of the way.

15 Yes, Mr. Meyers.

16 MR. MEYERS: Your Honor, do you want the discovery
17 disputes to go to you or the magistrate judge?

18 THE COURT: I think they should go to because it was
19 referred to Magistrate Judge Francis I think for general
20 pretrial before I got the case, I think you should since he is
21 more familiar with I think the discovery issues it should go
22 before him. He had sent the case up to me when it was the
23 subject of dispositive motion practice.

24 Well, you know what? Come to me.

25 Ms. Santiago, you should make a note that to the

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1 extent we need to that we'll withdraw the reference with regard
2 to general pretrial from Magistrate Judge Francis and we'll
3 just handle it going forward. Just come to me and I'll make a
4 ruling rather than having to go back to Magistrate Judge
5 Francis and get a schedule and the like.

6 Although let me ask this question. Are these the
7 issues that you believe may be in dispute? Are they issues
8 that Judge Francis has already been asked to rule on some
9 aspect of them?

10 MR. MEYERS: No.

11 THE COURT: OK. So why don't you just come to me. I
12 think that makes the most sense.

13 Mr. Hall.

14 MR. HALL: Yes, your Honor. You have the ability to
15 direct that service be made in a particular manner and I would
16 like to ask that your Honor preclude the plaintiffs from
17 attempting service upon the apartment that we have submitted
18 evidence the affidavit is not Mr. Marin's address. I don't
19 want to go through that issue again.

20 THE COURT: I understand your request.

21 MR. HALL: It may be novel but --

22 THE COURT: No. I think that to the extent Mr. Meyers
23 wants to go that route he is running the risk you know and that
24 risk is that it'll be again dismissed when he's had already
25 preview of what the issues were and the benefit of also the

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1 affidavits that have been filed here.

2 MR. HALL: Then would your Honor direct counsel to
3 once he believes service has been made to communicate to
4 Mr. Cadena Marin's counsel, us, that they believe service has
5 been made at where ever and give us the affidavit of service
6 because I don't want to be in a default situation where they
7 make a service on a doorman like they did before and we don't
8 know about it.

9 THE COURT: Well, I am just thinking initially when we
10 serve a complaint don't you typically file the affidavit of
11 service on ECF?

12 I don't know whether, Mr. Hall, whether you are on
13 ECF.

14 MR. HALL: I am now.

15 THE COURT: I think that will provide --

16 MR. HALL: Fair enough.

17 THE COURT: Mr. Meyers?

18 MR. MEYERS: Sure, your Honor. Just so I am clear, is
19 it your ruling today that you want me to file the new action
20 and serve Mr. Marin Cadena within a month of today?

21 THE COURT: That's correct.

22 MR. MEYERS: OK. The only concern that I have with
23 that is that I still don't know what Mr. Marin's current
24 address in Florida is, so if the New York apartment is out
25 which maybe it is, then I still have to get discovery responses

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1 from the Gabriela Cadena defendants about what his current
2 location is unless counsel wants to accept for him which I
3 guess not but --

4 THE COURT: Let me ask because I think under normal --
5 let me -- again, I haven't seen the discovery requests. I
6 don't know what they -- but under normal circumstances I am not
7 sure that those, exactly what the relevance of those discovery
8 requests would be. In other words, I understand that you want
9 to -- I mean it may be -- well, actually, now I actually can
10 think of it. You may be wanting to identify potential people
11 with knowledge so that you can proceed with discovery against
12 them.

13 The other question I would have, because in the normal
14 circumstance if you were having difficulty with service I would
15 make a determination as to whether or not what attempts you had
16 made to determine where he lives in Florida. What efforts have
17 you in fact made?

18 MR. MEYERS: Sure. At this point we have not
19 attempted to serve him in Florida. The only information I have
20 is a last known Florida address which now I know is no longer
21 where he lives but --

22 THE COURT: OK. I am not sure, are you asking for
23 more than four weeks?

24 MR. MEYERS: Yes, judge, I am.

25 THE COURT: OK. How much time would you request?

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1 MR. MEYERS: I would request 60 days and I would
2 also -- I know this is sort of maybe getting ahead of things
3 but since I know one of the discovery issues that is bringing
4 before the Court unless we can resolve it with Mr. Sigda is I
5 need an answer to my interrogatory, mostly the interrogatory
6 answer about where is Mr. Cadena's, where is he now?
7 Presumably, his daughter would know. I'd really want to get an
8 answer to that interrogatory before -- as soon as possible.
9 It's overdue. So that's something I would like to have. If I
10 could have that -- I don't know why that wouldn't be something
11 that I could get within like the next week or two.

12 THE COURT: Why don't you meet and confer with regard
13 to that issue and those discovery requests. Do that within a
14 week and basically I expect you to know what the issues are, in
15 other words, where there's disagreement and then send me a
16 letter outlining those disagreements and I can rule on those
17 issues to the extent that you haven't been able to resolve
18 them. I'll give you the 60 days and I think you should be able
19 to complete everything in that time period because I will hear
20 you fairly quickly once I get the letter.

21 Mr. Hall.

22 MR. HALL: It just occurred to me that because of the
23 dismissal and he has to refile against Mr. Cadena Marin he's be
24 getting a new case number and we won't have appeared -- so can
25 counsel be directed to send us a courtesy copy of the affidavit

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Argument

1 of service once service has been purportedly made?

2 MR. ROSENFELD: He should certainly serve you as well
3 as, your Honor.

4 MR. MEYERS: I would agree to that regardless of
5 whether you're directing me.

6 THE COURT: Ms. Santiago, 60 days from today.

7 MR. SIGDA: Judge, as to the Cadena defendants,
8 Gabriela Cadena defendants, just some clarification, can we
9 have from like two weeks from when he files the new complaint
10 to answer rather than going through and answering the current
11 complaint and getting the new complaint and seeing what the new
12 complaint says and then answering that complaint.

13 THE COURT: That's fine. Actually, what I'll propose
14 is this perhaps, Mr. Meyers, when you do the complaint for
15 Mr. Marin, you file an amended complaint that looks exactly
16 like the Mr. Marin complaint but contains the additional
17 allegations with regard to the 12(b)(6) issue and the personal
18 jurisdiction issue. The only difference will be that one
19 caption will just have Mr. Marin. The other will have all of
20 the other defendants. And in that way you'll have what the
21 current version is, so we don't have to go through
22 consolidation later on and I think that would be just a
23 needless exercise.

24 MR. SIGDA: The other thing I would request is we held
25 off on depositions pending termination --

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Argument

1 THE COURT: That's fine. I am not happy about that
2 but that's fine because I wanted to move the case forward. But
3 I think that does make sense because what I also don't want to
4 have happen is for depositions to very occur, for Mr. Marin to
5 come in and assuming the service and everything is OK, for him
6 to say you know I didn't have an opportunity to defend these
7 depositions, I would have asked some questions. And I don't
8 want to have to then go through that process again of I think
9 it's a needless expense for the parties and you know I'd rather
10 just do it once and the case isn't that old that I am that
11 concerned about the delay.

12 MR. MEYERS: Just so I am clear on what I am filing,
13 so that I am really filing two complaints, one will be a
14 separate complaint solely against Mr. Marin Cadena with a new
15 docket number and simultaneously I guess a second amended
16 complaint in the case we currently have that has mirrors as the
17 same factual allegations.

18 THE COURT: I think so. I mean in the end this is the
19 first time this has come up for me where you have a situation
20 like this. But I think you do have to basically file a new
21 case as to Mr. Marin because I am dismissing the current one.
22 So I don't think you could treat it as if he was never named in
23 the current action and merely then serve that one. I don't
24 believe -- again, I am willing to hear you on that. You know I
25 haven't actually researched exactly how as a matter of process

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Argument

1 that would be done but I think that's the way I would suggest
2 proceeding.

3 MR. MEYERS: One thing I would ask is for me to file
4 the second amended complaint against the existing defendants in
5 our existing case just so that I don't get a bounce back from
6 the clerk's office, I don't know if you are going to make an
7 order on ECF as a result of today's proceeding, but if it's
8 possible to put something in there that you're giving me
9 permission to file that second amended complaint.

10 COURTROOM DEPUTY: Yes. In the minute entry I'll put
11 that you have leave for permission to file the second amended
12 complaint. So if you have any issues with filing and the
13 clerk's office rejects it you can call me and then I can keep
14 the case open.

15 MR. MEYERS: Thank you.

16 MR. HALL: Judge, the only comment I'd like to add and
17 procedurally I don't know how to do it is obviously that new
18 complaint we want to be before your Honor as opposed to a
19 different judge who doesn't know anything about the case.

20 THE COURT: Mr. Meyers, I believe when you filed it
21 you should mark the matter as related to this case. It will
22 then be -- the clerks will then send me a notification that a
23 case has been filed that's indicated that's related to another
24 case. Then internally there's a committee that considers that
25 here other judges. I would do what I need to do internally and

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Argument

1 I can't imagine but I imagine the case will then just be, it
2 will be transferred here to me as related to the currently
3 pending case.

4 MR. MEYERS: OK.

5 THE COURT: So 60 days, Mr. Meyers, to both file the
6 new case for lack of a better term against Mr. Marin and the
7 second amended complaint against the other defendants. Within
8 a week I expect the parties to meet and confer as to the
9 outstanding discovery issues and that can be over the phone.
10 It doesn't have to be in-person, obviously.

11 MR. ROSENFELD: Your Honor, the question on it with
12 respect to discovery insofar as the many Cadena defendants are
13 current, we aren't really involved at this point.

14 THE COURT: That's correct. Discovery just with
15 regard to the defendants who would currently be it. So it's
16 the Gabriela Cadena defendants.

17 MR. HALL: Just a moment ago, 60 days to file, I think
18 you mean 60 days to file and serve.

19 THE COURT: That is correct. So meet and confer
20 within a week. If there continues to be a dispute I'd like to
21 get a letter by Monday, a week from this coming Monday,
22 Ms. Santiago.

23 COURTROOM DEPUTY: May 12.

24 THE COURT: So by May 12 I'd like to get a letter
25 consistent with my individual rules on discovery disputes. And

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Argument

1 in the meantime if we need to withdraw the referrals we'll take
2 care of that.

3 COURTROOM DEPUTY: The 30 days would be June, I mean
4 the 60 days.

5 THE COURT: 60 days is June 30 to serve and file. Is
6 there anything else that we need to deal with today?

7 MR. HALL: Not for us.

8 MR. ROSENFELD: Not for us.

9 MR. SIGDA: No, judge.

10 THE COURT: Mr. Meyers?

11 MR. MEYERS: No, judge.

12 THE COURT: So we will stand adjourned. Thank you
13 very much for coming in.

14 (Adjourned)